SUPREME COURT, U.S.
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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-466

PETER J. BRENNAN, SECRETARY OF LABOR,
Petitioner,

v.

WALTER BACHOWSKI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MEMORANDUM OF UNITED STEELWORKERS OF AMERICA, AFL-CIO

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Although not named in the caption of the petition for certiorari, United Steelworkers of America, AFL-CIO ("USWA") is a party herein pursuant to this Court's Rule 21(4).[1] USWA shares the view of the Secretary of Labor, expressed in his petition, that this case warrants review by

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[1] USWA was a co-defendant with the Secretary of Labor in the district court (Petition, page 21A), and was an appellee in the Court below (*Id.*, page 1A).

this Court.[2] In this memorandum, we briefly describe the importance of this case from the vantage point of unions whose elections are regulated by Title IV.

ARGUMENT

In *Trbovich* v. *Mine Workers,* 404 U.S. 528, 537 (1972), this Court recognized the Congressional intention "to insulate the union from any complaint that did not appear meritorious to . . . the Secretary." The decision below, by opening the door to possible suits on claims which the Secretary has found without merit, is in apparent conflict with the statutory scheme adopted by Congress and recognized in *Trbovich.* Moreover, as explained herein, the decision below will have adverse effects upon unions' abilities to perform effectively, effects which Congress did not intend.

It is self-evident that a union officer whose election is under challenge is handicapped in the performance of his duties. Congress was sensitive to this problem when it enacted Title IV. One of its objectives was "to settle as quickly as practicable the cloud on the incumbents' title to office . . ." *Wirtz* v. *Bottle Blowers Association,* 389 U.S. 463, 468-469, n. 7 (1968). To that end, Congress specified time limits both for the filing of members' complaints with the Secretary, 29 U.S.C. §482(a), and for the institution of lawsuits by the Secretary when he finds such complaints meritorious, 29 U.S.C. §482(b).

The decision below, by allowing private actions challenging the Secretary's determination that suit under Title IV is

[2] The issue presented relates to the scope of the Secretary's authority under Title IV of the LMRDA. USWA, believing that such an issue is more appropriately presented to this Court by the Secretary than by private parties subject to that authority, refrained from filing its own petition. However, USWA fully supports the Secretary's perception of his authority, and thus agrees with the Secretary that the case was wrongly decided by the court below and that, at the least, the decision below warrants review by this Court.

not warranted, necessarily extends the period during which a union officer's status remains under a cloud. Nor should it be assumed that the filing of such private actions would be limited to the rare situations in which a credible claim could be mounted that the Secretary has abused his discretion. The realities of union politics being what they are, a defeated candidate has many reasons, independent of any hope of ultimate litigation victory, for filing such an action. The action serves, in effect, as the kick-off of his campaign for the *next* union election. He is likely to achieve considerable notoriety by the filing of such an action, and its pendency enables him to appeal to the electorate that he was "robbed" in the last election and deserves their consideration in the next.

By opening the judicial gates to such actions, the decision below invites a flood. The experience in USWA's 1973 election is an augur. Complaints were filed to the Secretary involving four offices, and the Secretary brought suit only with respect to the two complaints which he found meritorious. Each of the other two complainants filed a private action challenging the Secretary's failure to file suit on his behalf.[3]

It is of course theoretically conceivable that the Secretary might someday decline to sue in circumstances which a court might later find arbitrary or capricious. But Congress clearly believed that that danger was outweighed by the harm which would result from permitting the host of lawsuits in which such a claim would be advanced frivolously. The "limited resources of the Secretary" (*Hodgson* v. *Steelworkers,* 403 U.S. 333, 339 (1971)) and of the union would be diverted from their assigned functions; the courts would be overburdened; and the union's ability to represent its mem-

[3] In addition to the instant case, see *Valenta* v. *Brennan,* Civ. Ac. No. C-74-11 (N.D. Ohio, Eastern Div.).

bers would be hampered by the continuing doubt whether its officers were properly elected and would serve out their term. At the least, considering the conflict among the lower courts, these consequences should not be allowed without prior review by this Court.

Respectfully submitted,

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